



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,632	01/23/2004	James R. Lawter	ORA5002USACNT1 (J&JO-103U)	7747
27777	7590	04/25/2008	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			BUMGARNER, MELBA N	
		ART UNIT	PAPER NUMBER	
				3732
		MAIL DATE	DELIVERY MODE	
		04/25/2008	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/763,632	LAWTER ET AL.	
	Examiner	Art Unit	
	Melba Bumgarner	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 31 January 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 22-27,36-41 and 49-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 22-27,36-41 and 49-52 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 22-25, 36-39, and 49-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brizzolara et al. (5,236,355) in view of Kozam (4,575,375) and further in view of Firth et al. (RE37,439). Brizzolara et al. disclose an apparatus 2 for dispensing material comprising a barrel 10 including a body portion and a tube portion, the tube portion extending from the body portion and including a tip 7; and a plunger 4, at least a portion of the plunger slideably housed within the barrel and a quantity of dry particles 9, at least a portion of the dry particles within the tip; however, they do not show a tip configured for being deformed. Kozam teaches an apparatus for dispensing material to a periodontal pocket including a tip 115 configured for being deformed to at least one different cross-sectional geometry (column 7 line 29). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Brizzolara et al. to have the tip of Kozam to be able to place the tip at a particular location to dispense the composition, such as the bottom of the periodontal pocket. The modified apparatus of Brizzolara et al. and Kozam does not show the body portion including flexible flanges. Firth et al. teach an apparatus for dispensing material further comprising the body portion including a portion for forming a temporary locking engagement with flexible flanges of an external force applying member (figure 1). The flexible flanges

extend from a collar and are designed to move radially. It would have been obvious to one of ordinary skill in the art to further modify the apparatus to have the portion of Firth et al. in order to make it easy to assemble but not easily slip out in view of Firth et al and the mere reversal of elements involves only routine skill in the art. Firth et al. further teach a configured indent in the body portion for engaging at least one nub of the applying member. Firth et al. show an external force applying member including a handle.

3. Claims 26, 27, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brizzolara et al. in view of Kozam and Firth et al. and further in view of Disccko, Jr. (5,129,825). The modified apparatus disclose limitations as described above; however, they do not show the handle including a spring-load shaft housed within a sleeve of the applying member. Disccko, Jr. teaches an apparatus for dispensing material comprising a force applying member sleeve, and spring-loaded shaft (figures 2,3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the sleeve of Disccko, Jr. on the apparatus in order to more effectively control ejecting of material. Firth et al. show a thumb ring at the proximal end of the handle in order to facilitate use of the applying member.

Response to Arguments

4. Applicant's arguments with respect to the rejected claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is 571-272-4709. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Melba Bumgarner/
Primary Examiner, Art Unit 3732